

June 22, 2005

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Video News Releases and Their Use by Broadcast Licensees
and Cable Operators (MB Docket No. 05-171)

Dear Ms. Dortch:

I am writing in response to the Public Notice regarding VNRs issued by the Federal Communications Commission (FCC) on April 13, 2005 (FCC 05-84).

It seems clear that the FCC has the right to require stations to disclose when a payment is made to television stations in exchange for something to air. What is far less clear is the FCC's rights to significantly expand its controls on the content of broadcast news when payment has not been made to stations and the material must clear journalistic gatekeepers relying on their news judgment before it sees air.

There are serious First Amendment issues to consider. The FCC's web site notes "Expressions of views that do not involve a "clear and present danger of serious substantive evil" come under the protection of the Constitution, which guarantees freedom of speech and freedom of the press. It seems that stations use of matter furnished to them, including video news releases, after it has been reviewed and cleared by journalists does not meet the test of "clear and present danger of serious and substantive evil" which the FCC itself sees as the standard to set limits on broadcasters. The FCC Notice appears inconsistent with these First Amendment protections.

Of greatest concern, is the section in paragraph 3, page 3 of the notice that could require disclosure on "matter...furnished either in whole or in part and by whom or on whose behalf such consideration was supplied. The announcement (by stations) must fully disclose the true identity of the person". Depending on how it is interpreted, stations could be subject to a fine even if they aired a report based upon an unnamed source or whistleblower. If this rule were in effect in 1973, a station would have faced fines if they broadcast a story about Watergate based upon information from "Deep Throat" and refused to disclose his identity.

It seems the intent of the FCC Notice is to protect the public. Unfortunately, this FCC Notice as written could pose serious threats to the public good by going far beyond existing rules significantly increasing government control over broadcast news.

I found it curious that in the request for comments, there was no request for information regarding how these changes might conflict the First Amendment. I would call on all groups who are interested in the free speech issue and the ability of the “Fourth Estate” to serve as a credible watchdog on Government behavior to submit replies to the FCC Notice as well.

The notice did ask for information regarding current broadcast practice. The Radio-Television News Directors Association (RTNDA) has issued new guidelines on use of VNRs. CBS Newspath labels VNR video it distributes on its corporate feed and identifies the funding sponsor to its affiliates. CNN now has VNR video and its own video on a separate interface so a station cannot pull a VNR thinking it was CNN content. Representatives of the Fox News affiliate feed told us they now include a “Courtesy of” banner on all third-party video sent out to its affiliates.

A broadcast industry study found that viewers actually believe there is more of a commercial impact on news content (because of paid advertisement) than there actually is. A recent survey of more than a thousand television viewers by Ipsos for D S Simon Productions shows that news audiences are more likely to watch a news program that always discloses the source of any third-party video it uses.

Viewers were asked if they if they would be more likely, less likely or just as likely to watch a news program if they always disclosed to you as the viewer the source of this third-party video?”

Overall, 42% of respondents said they were more likely to watch a program that always disclosed video sources, and 39% were just as likely to watch, meaning 81% of respondents were not affected negatively by disclosure. Only 16% said they would be less likely to watch a news program if it disclosed the sources of outside video. If news directors or TV producers fear using or disclosing third-party video to viewers, the survey indicates that disclosing the source of footage could actually boost ratings, not threaten them.

It seems clear that the goals of the public, broadcasters and the FCC are in favor of more disclosure. I have been working to encourage more disclosure by the public relations industry. I would encourage the FCC, broadcasters and the public to continue to encourage more disclosure. This makes it unnecessary to expand government mandates for disclosure in contravention to First Amendment freedoms of speech and of the press as applied to news broadcasts.

I am encouraged by conversations I’ve had with FCC staffers that your intent is not to limit freedom of the press. Unfortunately, comments by Commissioner Adelstein have allowed others to draw different conclusions. I look forward to working with the Commissioner’s office to help clarify this to broadcasters, public relations professionals and the general public.

Thank you very much,

Douglas Simon
President & CEO
D S Simon Productions